

**COOPERATIVE AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
THE CALTRAIN JOINT POWERS BOARD
CONCERNING THE CALTRAIN MAINTENANCE FACILITY**

THIS AGREEMENT is made and entered into this ____ day of _____ 2000, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and the PENINSULA CORRIDOR JOINT POWERS BOARD, a Joint Powers Authority, (hereinafter "JPB").

RECITALS

- A. The JPB contemplates constructing a Maintenance Facility near Lenzen Avenue in the City of San Jose, (the "MAINTENANCE FACILITY");
- B. The JPB has prepared an Environmental Assessment/Initial Study for the MAINTENANCE FACILITY and has found that the project will not have any significant adverse environmental impacts that can not be sufficiently mitigated;
- C. The CITY has publicly supported the construction of the MAINTENANCE FACILITY;
- D. The CITY, however, is concerned about the effects the MAINTENANCE FACILITY will have on the surrounding residential community and a Caltrain Maintenance Facility Task Force ("TASK FORCE") was formed to address neighborhood issues and concerns and to represent the interests of the affected neighborhoods;

9/12/00

1

- E. The parties agree it is in the public interest for the CITY and JPB to design, construct and operate the MAINTENANCE FACILITY in a mutually beneficial manner to reduce the effects of the MAINTENANCE FACILITY on the residential neighborhoods based upon shared objectives to be adopted by the JPB and CITY, as further described herein (“Shared Objectives”);
- F. CITY and JPB acknowledge that the potential effects of the MAINTENANCE FACILITY that CITY is seeking to address are typical interface issues that can occur between residential and non-residential uses that include but are not limited to aesthetics, noise, traffic, air pollution, health and safety as a result of MAINTENANCE FACILITY construction and operation;
- G. CITY and JPB acknowledge that collaboration, compromise and good faith on the part of all parties are necessary for the process set forth in this AGREEMENT to work to the satisfaction of both parties;
- H. The CITY reserves the right to reconsider its support for the MAINTENANCE FACILITY if it determines that the JPB is not proceeding with this AGREEMENT in good faith;
- I. The CITY acknowledges that JPB, in entering into this AGREEMENT, is not admitting to the existence of significant impacts resulting from the construction and operation of the MAINTENANCE FACILITY, but is doing so in the spirit of cooperation with the CITY and its residents. The JPB has previously determined

that the construction and operation of the MAINTENANCE FACILITY will not have a significant adverse environmental impact; and

- J. CITY and JPB, in recognition of the mutual benefit to be derived from the MAINTENANCE FACILITY, desire to enter into a binding agreement that provides for cooperation in the design, construction and future operation of the MAINTENANCE FACILITY.

NOW, THEREFORE, the parties hereby agree as follows:

1. PROJECT DESCRIPTION; BACKGROUND.

- A. The MAINTENANCE FACILITY will consist of the Caltrain Maintenance Facility that is to be located at the Lenzen Avenue site in San José. The Lenzen Avenue site is currently part of an active rail corridor that serves both freight and passenger services. In addition to the daily JPB-operated Caltrain service, the mainline of the Union Pacific corridor travels through the Lenzen site. The site also currently serves as the daily storage area for the Altamont Commuter Express (ACE) trains. Improvement and expansion of Caltrain service, as well as proposed future increases in the use of rail transit in the region has made construction of a full-time centralized maintenance facility a priority.
- B. The JPB is engaged in a comprehensive renovation of Caltrain service and facilities along the length of its service area from San Francisco to Gilroy. The JPB has determined that a new centralized maintenance facility is necessary to

accommodate proposed train service by consolidating maintenance activities at a single site along the corridor.

- C. The preliminary studies of potential sites resulted in the identification of two potential sites within the CITY: the Newhall Yard and the Lenzen Avenue Yard. The CITY expressed a preference for the Newhall Yard site with the Lenzen Avenue site as a less preferable but still acceptable alternative site. Caltrain proceeded with the preparation of an Environmental Assessment/Initial Study of both sites. After a detailed analysis, Caltrain determined that development of the Newhall Yard site was not preferable and selected the Lenzen site. This determination resulted in the issuance of a Finding of No Significant Impact (FONSI) and Mitigated Negative Declaration for this site.

2. AGREEMENT OBJECTIVES

- A. JPB, in consultation with CITY, will develop design enhancements which pertain to the Shared Objectives for the MAINTENANCE FACILITY during the final design of the facility. The enhancements agreed upon by both parties will be attached as an addendum to this AGREEMENT prior to the completion of the final design. The General Engineering Consultant (GEC) to Caltrain, the CITY's independent consultant and the TASK FORCE will work together in developing the design enhancements for the MAINTENANCE FACILITY.
- B. JPB, in consultation with CITY, will develop operational policies which pertain to the Shared Objectives for the MAINTENANCE FACILITY as the JPB

completes the final design of the MAINTENANCE FACILITY. The JPB will provide sufficient opportunity for the CITY, the CITY's independent consultant and the TASK FORCE to review and comment on the proposed operational policies for the MAINTENANCE FACILITY. This process will likely extend beyond the design phase of the MAINTENANCE FACILITY and may continue through the opening of the MAINTENANCE FACILITY.

3. CONSULTANT REVIEW

- A. CITY and JPB acknowledge that CITY has hired and supervises one or more consultant(s) to represent the interests of the CITY, and the residents of its affected neighborhoods, in reviewing JPB design and operation plans for the MAINTENANCE FACILITY. The general scope of work for the consultant(s) is attached as Exhibit A. The parties acknowledge that the consultant(s)'s review is not intended to duplicate existing environmental studies of the MAINTENANCE FACILITY.
- B. CITY'S consultant(s) will review the JPB's design of the MAINTENANCE FACILITY and recommend changes or enhancements to the design that will address project impacts to the residential neighborhoods. Design recommendations will be proposed within the confines of the design process and timeline.
- C. CITY will have sole discretion over the number and types of consultant(s) that will represent its interests and the interests of its affected neighborhoods in the design and operational review.

- D. CITY and JPB acknowledge that design work has not been completed for the MAINTENANCE FACILITY. JPB and its agents agree to work collaboratively with CITY's consultant(s) and the TASK FORCE to freely share information on MAINTENANCE FACILITY design and operations on a timely basis to ensure opportunities for meaningful CITY and neighborhood comment.
- E. Upon execution of any consultant contract, JPB will make available to the consultant all MAINTENANCE FACILITY design and operational information available at that time. As additional information becomes available, JPB will make such information available to the consultant. All documents, reports, studies, and other products developed by the CITY consultant(s) will be delivered to the JPB at the same time they are provided to the CITY.
- F. JPB agrees to (1) contribute up to \$50,000 towards the cost of the consultant contract(s) and (2) match, on a dollar for dollar basis up to a total of \$25,000, any contribution of CITY towards the cost of the consultant contract(s), except JPB shall not be obligated to pay for any consultant services that duplicate existing environmental studies, and any such costs shall not be considered in the calculation of the JPB matching funds. CITY shall pay any additional consultant costs. CITY will submit copies of invoices it has paid on a monthly basis to the JPB. The JPB agrees to reimburse CITY the costs of the invoices within sixty (60) days after they are submitted by the CITY. Any modification of this AGREEMENT must be agreed to by the parties in writing.

- G. JPB acknowledges that the CITY will share the consultant(s) recommendations with the TASK FORCE and will solicit comments and suggestions from its members.

4. JPB COMMITMENTS

- A. The JPB will design and operate the MAINTENANCE FACILITY in a manner that will reduce impacts on the residential neighborhood based upon the Shared Objectives, including agreed upon design enhancements pursuant to the terms of this AGREEMENT.
- B. The JPB agrees to construct the MAINTENANCE FACILITY in accordance with its policies for future modifications of the Caltrain system, including the Caltrain Rapid Rail Study and proposed future Caltrain electrification.
- C. JPB affirms its intent to work as cooperatively as possible with the CITY in the site development process for the MAINTENANCE FACILITY to reduce the impacts on surrounding neighborhoods. The JPB agrees to include in the MAINTENANCE FACILITY budget funds for the projected costs necessary to achieve the design measures that will be attached as an addendum to this AGREEMENT pursuant to Section 2.A. JPB is committed to budget and fund these measures.

5. CITY AND JPB COMMITMENTS

9/12/00

7

- A. CITY and JPB agree that, following the execution of this AGREEMENT, they will convene a process to develop the Shared Objectives, which Shared Objectives will be adopted as an amendment to this AGREEMENT.
- B. Both the CITY and JPB agree that any rejection of a proposed design change or modification by either side shall be made in good faith with a reasoned explanation, and accompanied, whenever possible, by a meaningful alternative proposal.
- C. At the conclusion of the design review process, both the CITY and JPB agree to amend this AGREEMENT to incorporate mutually agreed upon design measures described in Section 2.A. Additionally, future design modifications that alter these measures shall not be made until JPB has provided advanced notice to all properties within 2,000-feet from the project boundaries of the MAINTENANCE FACILITY and until JPB has held a public meeting to discuss the proposed changes. JPB also shall provide notice to the Shasta-Hanchett Neighborhood Association and College Park Neighborhood Association. The time and place of the public meeting shall be at a time and location convenient to the residential neighborhood.
- D. The CITY affirms its intent to work as cooperatively as possible with JPB to expedite all CITY review processes for development and construction of the MAINTENANCE FACILITY in a timely manner.
- E. The City and JPB agree to convene a maintenance facility oversight committee to provide ongoing communication with the community regarding the design,

implementation and operation of the maintenance facility. The committee will consist of one member of the City Council as appointed by the Council, one member of the JPB as appointed by the JPB, one member of the Santa Clara Valley Transportation Authority (VTA) as appointed by the VTA Board of Directors, and one representative from each the Shasta/Hanchett Park, Garden Alameda, College Park and Arena Neighborhood Associations.

6. GENERAL PROVISIONS

A. No Pledging of Credit

Under no circumstances shall CITY or the JPB have authority or power to pledge the credit of the other public entity party to this AGREEMENT or incur obligation(s) in the name of the other public entity.

B. No Third Party Beneficiary

This AGREEMENT shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties, and no third party or parties shall have any claim or right of action hereunder for any causes whatsoever.

C. In the event that legal action is brought by the CITY, any member of the TASK FORCE, or any representative thereof, prior to the completion of construction of the MAINTENANCE FACILITY, the JPB shall have the option of terminating this AGREEMENT and shall have no further obligations as a result of this AGREEMENT.

D. Notices

Notices are to be sent as follows:

TO JPB: Executive Director
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Hanson, Bridgett, Marcus, Vlahos & Rudy,
LLP
333 Market Street, 23rd Floor
San Francisco, CA 94105
Attn: David J. Miller, Esq.

TO CITY: City of San José
Department of Public Works
675 North First Street
San José, CA 95112
Attn: Mr. Ben Tripousis,
Transportation Systems Manager

E. Waiver

The parties' waiver of any term, condition or covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

F. Entire Agreement

This AGREEMENT (which includes all addenda and amendments) contains the entire AGREEMENT between the JPB and CITY relating to the MAINTENANCE FACILITY. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.

G. Amendments

No alterations or changes to the terms of this AGREEMENT shall be valid unless made in writing and signed by all parties hereto.

H. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

I. Indemnification

Pursuant to Government Code Section 895.4 the JPB shall fully indemnify and hold CITY (including its governing bodies, officers, employees, assigns and agents), harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by JPB under or in connection with any work, authority

or jurisdiction delegated to JPB under this AGREEMENT. Neither CITY nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by JPB under or in connection with any work, authority or jurisdiction delegated to JPB under this AGREEMENT.

Pursuant to Government Code Section 895.4 the CITY shall fully indemnify and hold JPB (including its governing bodies, officers, employees, assigns and agents), harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. Neither JPB nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT.

J. Captions

The captions of the various sections, paragraphs, and subparagraphs of this AGREEMENT are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

"CITY"

CITY OF SAN JOSE, a municipal
corporation

By _____
Name:
Title:

APPROVED AS TO FORM:

By _____
Senior Deputy City Attorney

"JPB"

JOINT POWERS BOARD, a Joint Powers
Authority

By _____
Name:
Title:

APPROVED AS TO FORM:

By _____
Attorney